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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/709,297	04/27/2004	John I. Shipp	H-US-01160 (203-6224)	3296
50855	7590	11/17/2009		
Tyco Healthcare Group LP 60 MIDDLETOWN AVENUE NORTH HAVEN, CT 06473			EXAMINER NGUYEN, VI X	
			ART UNIT	PAPER NUMBER
			3731	
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			11/17/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/709,297	Applicant(s) SHIPP, JOHN I.	
	Examiner Victor X. Nguyen	Art Unit 3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 May 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 16-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 16-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>8/17/2009</u> . | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

1. Claims 16-35 are pending in this present application.

In response to applicant's remarks of 5/12/2009, the Specification, Drawings and Claims Objections are withdrawn

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 16, 18-23, 27, 30 and 34 are rejected under 35 U.S.C. 102(b) as being anticipated by Kuhns et al (6,551,333). As illustrated in fig. 5, Kuhns et al disclose a delivery device comprising: a housing 35, a delivery tube 92 has proximal and distal ends, a reciprocating anchor carrier 60,70, where the distal end of the anchor carrier terminates in a tissue penetrator member (96, 97), where the anchor carrier is moveable distally and proximally, where at least one surgical anchor 105 locates in a juxtaposition with the anchor carrier, where the surgical anchor has a penetration section and a head section 109. As illustrate in figures 4-20, Kuhns et al disclose at least an actuator 85 has two states, where the first state (figures 4, 14) causes the anchor carrier to be in its proximal most position and the second state (figures 5, 7, 8, 20) causes the anchor carrier in the distal most position with the penetration section of the surgical anchor exposed beyond the distal end of the delivery tube, and where the surgical anchor includes a blunt distal end 106 and includes one or more slit (the slit occurs between each leg 110,111, where

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the surgical anchor includes one or more barbs 107,108 for engagement with the tissue, where the surgical anchor includes a spring 115,116, and where the delivery device includes reaction members 110,111.

Claims 23, 30: Kuhns et al disclose a housing 35, a delivery tube (the delivery tube consist of items 92, 95) with distal and proximal ends, c. at least two reaction members 110, 111 fixed in respect to the delivery tube, and a reciprocating anchor carrier 60, 70, with distal and proximal positions and distal and proximal ends, the distal end of the anchor carrier terminating in a tissue penetrator member (figs. 21, 22), the reciprocating anchor carrier being moveable distally and proximally with respect to the delivery device.

Claims 27, 34: Kuhns et al disclose the surgical anchor including one or more barbs 107, 108 for engaging with the tissue.

Claims 23-26, 28-33 and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Stein et al 5,830,221.

Claims 23, 30, 35: Stein et al disclose a housing 12, a delivery tube (the delivery tube consist of items 18 and 40) with distal and proximal ends, at least two reaction members 48 fixed in respect to the delivery tube (fig. 15), and a reciprocating anchor carrier 30, with distal and proximal positions and distal and proximal ends, the distal end of the anchor carrier terminating in a tissue penetrator member (20), the reciprocating anchor carrier 30 being moveable distally and proximally with respect to the delivery device.

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Claims 24, 31: Stein et al disclose at least one surgical anchor 20 located in juxtaposition with the anchor carrier 30 each surgical anchor having a penetration section and a head section (the tip of item 20).

Claims 25, 32: Stein et al disclose the surgical anchor includes a blunt distal end (the blunt end occurs at the distal tip 20).

Claims 26, 33: Stein et al disclose the surgical anchor includes one or more slits 32.

Claims 28, 29: Stein et al disclose the reactions members 48 which allow the passage of the anchor in a single direction and where the device includes a spring (fig. 8).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 17 is rejected under 35 U.S.C. 103 (a) as being unpatentable over Kuhns et al (U.S.6,551,333).

Kuhns et al disclose the invention substantially as claimed. However, Kuhns does not disclose that the anchor is formed from one or more absorbable polymers. It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the anchor is formed from one or more absorbable polymers, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of

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its suitability for the intended use or as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

Response to Arguments

4. Applicant's arguments filed 5/12/2009 have been fully considered but they are not persuasive. Applicants state that Kuhns fails to suggest an actuator having at least two states. Examiner disagrees. In fact, as seen in figures 4-20 of Kuhn clearly discloses the actuator 85 in both states (it is noted that first first state occurs in figures 4, 14 and the second state occurs in figures 5, 7, 8, 20). Furthermore, the applicants argue that Kuhn does not disclose the penetration section of the anchor exposed beyond the distal end of the delivery tube. The examiner disagrees. In fact, as seen in figure 20 of Kuhn, the penetration section of the anchor exposed beyond the distal end of the delivery tube. Accordingly, the above noted references are still considered to read on the claimed limitations of the claims noted.

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor X. Nguyen whose telephone number is (571) 272-4699. The examiner can normally be reached on M-F (8-4.30 P.M).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anh Tuan Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Victor X Nguyen/
Examiner, Art Unit 3731

/((Jackie) Tan-Uyen T. Ho/
Supervisory Patent Examiner, Art Unit 3773